

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2007-0040-PST-E    **TCEQ ID:** RN101643716    **CASE NO.:** 32207  
**RESPONDENT NAME:** Dang Cong Huynh dba B & G Food Store

Page 1 of 2

|  |   |   |
|--|---|---|
| <b>ORDER TYPE:</b>   |   |   |
| <input checked="" type="checkbox"/> 1660 AGREED ORDER  | <input type="checkbox"/> FINDINGS AGREED ORDER              | <input type="checkbox"/> FINDINGS ORDER FOLLOWING<br>SOAH HEARING       |
| <input type="checkbox"/> FINDINGS DEFAULT ORDER  | <input type="checkbox"/> SHUTDOWN ORDER                     | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL<br>ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER   | <input type="checkbox"/> EMERGENCY ORDER                    |   |
| <b>CASE TYPE:</b>  |   |   |
| <input type="checkbox"/> AIR   | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL AND HAZARDOUS<br>WASTE              |
| <input type="checkbox"/> PUBLIC WATER SUPPLY   | <input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION                     |
| <input type="checkbox"/> WATER QUALITY   | <input type="checkbox"/> SEWAGE SLUDGE                      | <input type="checkbox"/> UNDERGROUND INJECTION<br>CONTROL               |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE   | <input type="checkbox"/> RADIOACTIVE WASTE                  | <input type="checkbox"/> DRY CLEANER REGISTRATION                       |
| <p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> B &amp; G Food Store, 3801 East Rosedale Street, Fort Worth, Tarrant County</p> <p><b>TYPE OF OPERATION:</b> Convenience store with retail sales of gasoline</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on August 13, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b><br/> TCEQ Attorney/SEP Coordinator: None<br/> TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-0577;<br/> Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468<br/> Respondent: Mr. Dang Cong Huynh, Owner, B &amp; G Food Store, 3801 East Rosedale Street, Fort Worth, Texas 76105<br/> Respondent's Attorney: Not represented by counsel on this enforcement matter</p> |   |   |

**VIOLATION SUMMARY CHART:**

| VIOLATION INFORMATION  | PENALTY CONSIDERATIONS   | CORRECTIVE ACTIONS<br>TAKEN/REQUIRED  |
|--|--|---|
| <p><b>Type of Investigation:</b><br/> <input type="checkbox"/> Complaint<br/> <input checked="" type="checkbox"/> Routine<br/> <input type="checkbox"/> Enforcement Follow-up<br/> <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> December 5, 2006</p> <p><b>Date of NOE Relating to this Case:</b> January 2, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation. Three violations were documented.</p> <p><b>WASTE</b></p> <p>1) Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing underground storage tank ("UST") system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p> <p>2) Failed to maintain all piping, pump, mainways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons [30 TEX. ADMIN. CODE § 334.54(b)].</p> <p>3) Failed to provide amended registration regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration was not updated to reflect the current out of service status of the USTs [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> | <p><b>Total Assessed:</b> \$9,350</p> <p><b>Total Deferred:</b> \$1,870<br/> <input checked="" type="checkbox"/> Expedited Settlement<br/> <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$327<br/>         (the remaining \$7,153 to be paid in 23 monthly payments of \$311 each)</p> <p><b>Site Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> | <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, begin maintaining all piping, pumps, man ways, tank access points and ancillary equipment in a capped, plugged, locked and/or otherwise secured manner; and</p> <p>b. Within 30 days after the effective date of this Agreed Order, either:</p> <p>i. Permanently remove the UST system from service; or</p> <p>ii. Install and implement a release detection method;</p> <p>iii. Install and implement a corrosion protection method; and</p> <p>iv. Demonstrate Financial Assurance for all USTs at the Facility.</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit an amended registration to reflect the current operational status of the UST system;</p> <p>d. Within 60 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts and/or other records to demonstrate compliance with Ordering Provisions a., b., and c.</p> |



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

TCEQ

|       |          |            |           |            |         |  |
|-------|----------|------------|-----------|------------|---------|--|
| DATES | Assigned | 4-Jan-2007 | Screening | 4-Jan-2007 | EPA Due |  |
|       | PCW      | 4-Jan-2007 |           |            |         |  |

## RESPONDENT/FACILITY INFORMATION

|                      |                                      |                    |       |
|----------------------|--------------------------------------|--------------------|-------|
| Respondent           | Dang Cong Huynh dba B & G Food Store |                    |       |
| Reg. Ent. Ref. No.   | RN101643716                          |                    |       |
| Facility/Site Region | 4-Dallas/Fort Worth                  | Major/Minor Source | Minor |

## CASE INFORMATION

|                                 |                        |                   |                   |
|---------------------------------|------------------------|-------------------|-------------------|
| Enf./Case ID No.                | 32207                  | No. of Violations | 2                 |
| Docket No.                      | 2007-0040-PST-E        | Order Type        | 1660              |
| Media Program(s)                | Petroleum Storage Tank | Enf. Coordinator  | Rajesh Acharya    |
| Multi-Media                     |                        | EC's Team         | EnforcementTeam 7 |
| Admin. Penalty \$ Limit Minimum | \$0                    | Maximum           | \$10,000          |

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 **\$8,500**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 10% Enhancement Subtotals 2, 3, & 7 **\$850**

Notes Enhancement for two NOVs with same or similar violations.

**Culpability** No 0% Enhancement Subtotal 4 **\$0**

Notes The respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** 0% Reduction Subtotal 5 **\$0**

|               |            |                               |
|---------------|------------|-------------------------------|
|               | Before NOV | NOV to EDPRP/Settlement Offer |
| Extraordinary |            |                               |
| Ordinary      |            |                               |
| N/A           | X          | (mark with x)                 |

Notes The respondent does not meet the good faith criteria.

0% Enhancement\* Subtotal 6 **\$0**  
Total EB Amounts \$6,133  
Approx. Cost of Compliance \$10,100  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal **\$9,350**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount **\$9,350**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty **\$9,350**

**DEFERRAL** 20% Reduction Adjustment **-\$1,870**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$7,480**

Screening Date 4-Jan-2007

Docket No. 2007-0040-PST-E

PCW

Respondent Dang Cong Huynh dba B &amp; G Food Store

Policy Revision 2 (September 2002)

Case ID No. 32207

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101643716

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

| Component                     | Number of...   | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs                          | Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)  | 2                 | 10%     |
|                               | Other written NOVs   | 0                 | 0%      |
| Orders                        | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)   | 0                 | 0%      |
|                               | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0                 | 0%      |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)  | 0                 | 0%      |
|                               | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government  | 0                 | 0%      |
| Convictions                   | Any criminal convictions of this state or the federal government (number of counts)  | 0                 | 0%      |
| Emissions                     | Chronic excessive emissions events (number of events)  | 0                 | 0%      |
| Audits                        | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)              | 0                 | 0%      |
|                               | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)   | 0                 | 0%      |
| Please Enter Yes or No        |  |                   |         |
| Other                         | Environmental management systems in place for one year or more   | No                | 0%      |
|                               | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program  | No                | 0%      |
|                               | Participation in a voluntary pollution reduction program   | No                | 0%      |
|                               | Early compliance with, or offer of a product that meets future state or federal government environmental requirements  | No                | 0%      |

Adjustment Percentage (Subtotal 2) 10%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for two NOVs with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 10%

Screening Date 4-Jan-2007

Docket No. 2007-0040-PST-E

PCW

Respondent Dang Cong Huynh dba B &amp; G Food Store

Policy Revision 2 (September 2002)

Case ID No. 32207

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101643716

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §§ 334.47(a)(2) and 334.54(b)

Violation Description

Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Also, the respondent failed to maintain all piping, pump, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

| Release   | Harm  |          |       |
|-----------|-------|----------|-------|
|           | Major | Moderate | Minor |
| Actual    |       |          |       |
| Potential | x     |          |       |

Percent 25%

## &gt;&gt; Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
|               |       |          |       |

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 3

90 Number of violation days

mark only one  
with an x

|              |   |
|--------------|---|
| daily        |   |
| monthly      | x |
| quarterly    |   |
| semiannual   |   |
| annual       |   |
| single event |   |

Violation Base Penalty \$7,500

Three monthly events (one per UST) are recommended from the investigation date of December 5, 2006 to the screening date of January 4, 2007.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$6,129

Violation Final Penalty Total \$8,250

This violation Final Assessed Penalty (adjusted for limits) \$8,250

## Economic Benefit Worksheet

**Respondent** Dang Cong Huynh dba B & G Food Store  
**Case ID No.** 32207  
**Reg. Ent. Reference No.** RN101643716  
**Media** Petroleum Storage Tank  
**Violation No.** 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0              | 15                    |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$  |           |               |            |     |                |               |           |

### Delayed Costs

|                          |          |             |             |     |       |         |         |
|--------------------------|----------|-------------|-------------|-----|-------|---------|---------|
| Equipment                |          |             |             | 0.0 | \$0   | \$0     | \$0     |
| Buildings                |          |             |             | 0.0 | \$0   | \$0     | \$0     |
| Other (as needed)        | \$10,000 | 22-Dec-1998 | 22-Sep-2007 | 8.8 | \$292 | \$5,837 | \$6,129 |
| Engineering/construction |          |             |             | 0.0 | \$0   | \$0     | \$0     |
| Land                     |          |             |             | 0.0 | \$0   | n/a     | \$0     |
| Record Keeping System    |          |             |             | 0.0 | \$0   | n/a     | \$0     |
| Training/Sampling        |          |             |             | 0.0 | \$0   | n/a     | \$0     |
| Remediation/Disposal     |          |             |             | 0.0 | \$0   | n/a     | \$0     |
| Permit Costs             |          |             |             | 0.0 | \$0   | n/a     | \$0     |
| Other (as needed)        |          |             |             | 0.0 | \$0   | n/a     | \$0     |

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. Date Required is the date when the respondent was required to upgrade the UST system. Final Date is the estimated compliance date.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

|                               |  |  |  |     |     |     |     |
|-------------------------------|--|--|--|-----|-----|-----|-----|
| Disposal                      |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Personnel                     |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment            |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2]       |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3]    |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed)             |  |  |  | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$6,129

Screening Date 4-Jan-2007

Docket No. 2007-0040-PST-E

PCW

Respondent Dang Cong Huynh dba B & G Food Store

Policy Revision 2 (September 2002)

Case ID No. 32207

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101643716

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.7(d)(3)

Violation Description

Failed to provide amended registration regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration was not updated to reflect the current out of service status of the USTs.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

| Release   | Harm  |          |       |
|-----------|-------|----------|-------|
|           | Major | Moderate | Minor |
| Actual    |       |          |       |
| Potential |       |          |       |

Percent 0%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
|               | x     |          |       |

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

30 Number of violation days

mark only one  
with an x

|              |   |
|--------------|---|
| daily        |   |
| monthly      |   |
| quarterly    |   |
| semiannual   |   |
| annual       |   |
| single event | x |

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the investigation conducted December 5, 2006.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$1,100

This violation Final Assessed Penalty (adjusted for limits) \$1,100

## Economic Benefit Worksheet

**Respondent** Dang Cong Huynh dba B & G Food Store  
**Case ID No.** 32207  
**Reg. Ent. Reference No.** RN101643716  
**Media** Petroleum Storage Tank  
**Violation No.** 2

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0              | 15                    |

| Item Description               | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| <small>No commas or \$</small> |           |               |            |     |                |               |           |

### Delayed Costs

|                          |       |            |             |     |     |     |     |
|--------------------------|-------|------------|-------------|-----|-----|-----|-----|
| Equipment                |       |            |             | 0.0 | \$0 | \$0 | \$0 |
| Buildings                |       |            |             | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed)        |       |            |             | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction |       |            |             | 0.0 | \$0 | \$0 | \$0 |
| Land                     |       |            |             | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System    |       |            |             | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling        |       |            |             | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal     |       |            |             | 0.0 | \$0 | n/a | \$0 |
| Permit Costs             |       |            |             | 0.0 | \$0 | n/a | \$0 |
| Other (as needed)        | \$100 | 5-Dec-2006 | 22-Sep-2007 | 0.8 | \$4 | n/a | \$4 |

Notes for DELAYED costs

Approximate cost to update UST registration. Date Required is the date of the investigation. Final Date is the estimated date of compliance.

### Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

|                               |  |  |  |     |     |     |     |
|-------------------------------|--|--|--|-----|-----|-----|-----|
| Disposal                      |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Personnel                     |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment            |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2]       |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3]    |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed)             |  |  |  | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

**TOTAL**

\$4



# Compliance History

|   |   |                  |  |                   |
|---|---|------------------|--|-------------------|
| Customer/Respondent/Owner-Operator:   | CN600813208                                       | HUYNH, DANG CONG | Classification: AVERAGE                          | Rating: 2.25      |
| Regulated Entity:   | RN101643716                                       | B & G FOOD STORE | Classification: AVERAGE                          | Site Rating: 4.50 |
| ID Number(s):   | PETROLEUM STORAGE TANK<br><del>REGISTRATION</del> |                  | REGISTRATION                                     | 74627             |
| Location:   | 3801 E ROSEDALE ST, FORT WORTH, TX, 76105         |                  | Rating Date: September 01 06 Repeat Violator: NO |                   |
| TCEQ Region:  | REGION 04 - DFW METROPLEX                         |                  |  |                   |
| Date Compliance History Prepared:   | January 11, 2007                                  |                  |  |                   |
| Agency Decision Requiring Compliance History:   | Enforcement                                       |                  |  |                   |
| Compliance Period:  | January 11, 2002 to January 11, 2007              |                  |  |                   |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History |   |                  |  |                   |
| Name:   | Rajesh Acharya                                    |                  | Phone:   | (512) 239-0577    |

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? HUYNH, DANG CONG
4. If Yes, who was/were the prior owner(s)? HUYNH, DON
5. When did the change(s) in ownership occur? 05/26/2006

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
  - 1 05/15/2006 (464884)
  - 2 10/05/2006 (515043)
  - 3 01/03/2007 (533249)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date: 05/15/2006 (464884)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

Description: Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(d)(2)

Description: Failure to ensure that all regulated substances have been removed as completely as possible.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)[G]

Description: Failure to assure that the UST system is secured to prevent access, tampering, or vandalism by unauthorized persons.

Date: 10/05/2006 (515043)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

Description: Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

|              |   |                 |          |
|--------------|---|-----------------|----------|
| Self Report? | NO  | Classification: | Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.54(b)[G]   |                 |          |
| Description: | Failure to assure that the UST system is secured to prevent access, tampering, or vandellsm by unauthorized persons.  |                 |          |
| Self Report? | NO  | Classification: | Minor    |
| Citation:    | 30 TAC Chapter 334, SubChapter A 334.7(d)(3)  |                 |          |
| Description: | Failure to provide amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition, as applicable. |                 |          |

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
DANG CONG HUYNH DBA B & G  
FOOD STORE  
RN101643716**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-0040-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Dang Cong Huynh dba B & G Food Store ("Mr. Huynh") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Huynh appear before the Commission and together stipulate that:

1. Mr. Huynh owns a property with underground storage tanks ("USTs") at 3801 East Rosedale Street in Fort Worth, Tarrant County, Texas (the "Facility").
2. The three underground storage tanks at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and Mr. Huynh agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Huynh is subject to the Commission's jurisdiction.
4. Mr. Huynh received notice of the violations alleged in Section II ("Allegations") on or about January 7, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Huynh of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Nine Thousand Three Hundred Fifty Dollars (\$9,350) is assessed by the Commission in settlement of the violations alleged in Section II



("Allegations"). Mr. Huynh has paid Three Hundred Twenty-Seven Dollars (\$327) of the administrative penalty and One Thousand Eight Hundred Seventy Dollars (\$1,870) is deferred contingent upon Mr. Huynh timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. Huynh fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require Mr. Huynh to pay all or part of the deferred penalty.

The remaining amount of Seven Thousand One Hundred Fifty-Three Dollars (\$7,153) of the administrative penalty shall be payable in 23 monthly payments of Three Hundred Eleven Dollars (\$311) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Mr. Huynh fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Mr. Huynh to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Huynh to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Huynh have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Huynh has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner of the Facility, Mr. Huynh is alleged to have:

1. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2), as documented during an investigation conducted on December 5, 2006.



2. Failed to maintain all piping, pump, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, in violation of 30 TEX. ADMIN. CODE § 334.54(b), as documented during an investigation conducted on December 5, 2006.
3. Failed to provide amended registration regarding USTs within 30 days from the date of occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during an investigation conducted on December 5, 2006. Specifically, the registration was not updated to reflect the current out of service status of the USTs.

### III. DENIALS

Mr. Huynh generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Huynh pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Huynh's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Dang Cong Huynh dba B & G Food Store, Docket No. 2007-0040-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that Mr. Huynh shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, begin maintaining all piping, pumps, man ways, tank access points and ancillary equipment in a capped, plugged, locked and/or otherwise secured manner, in accordance with 30 TEX. ADMIN. CODE § 334.54; and
  - b. Within 30 days after the effective date of this Agreed Order, either:
    - i. Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; or
    - ii. Install and implement a release detection method, in accordance with 30 TEX. ADMIN. CODE § 334.50;





- iii. Install and implement a corrosion protection method, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
  - iv. Demonstrate Financial Assurance for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 37.815.
- c. Within 45 days after the effective date of this Agreed Order, submit an amended registration to reflect the current operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section  
Permitting & Remediation Support Division, MC138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- d. Within 60 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a., 2.b, and 2.c.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951



3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Huynh. Mr. Huynh is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mr. Huynh fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Huynh's failure to comply is not a violation of this Agreed Order. Mr. Huynh shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Huynh shall notify the Executive Director within seven days after Mr. Huynh becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Huynh shall be made in writing to the Executive Director. Extensions are not effective until Mr. Huynh receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Huynh in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Huynh, or three days after the date on which the Commission mails notice of the Order to Mr. Huynh, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

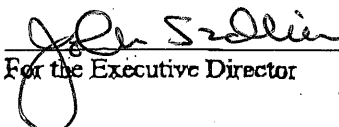


Dang Cong Huynh dba B & G Food Store  
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## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

  
For the Executive Director

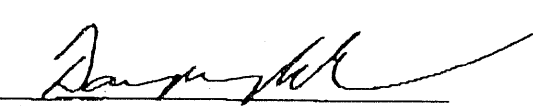
10/18/07  
6-13-07  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

6-13-07  
Date

DANG CONG HUYNH  
Name (Printed or typed)

owner  
Title

Authorized Representative of

Dang Cong Huynh dba B & G Food Store

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Section at the address in Section IV, Paragraph 1 of this Agreed Order.

